



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2019-0399; FRL-10009-52-Region 2]

Approval of Air Quality Implementation Plans; New Jersey; Gasoline Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New Jersey State Implementation Plan (SIP) for the ozone National Ambient Air Quality Standards which includes regulatory amendment revisions relevant to the New Jersey Department of Environmental Protection's requirements for Stage I and Stage II vapor recovery systems at gasoline dispensing facilities. New Jersey's comprehensive submittal also included changes in amendments for its air permitting program and t-butyl acetate emission reporting requirements, however, the EPA will be acting on these amendments under a separate action.

DATES: The final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2019-0399. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Linda Longo, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3565, or by email at longo.linda@epa.gov.

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I. Background

The EPA is approving a revision to the State of New Jersey's (the State) SIP for attainment and maintenance of the ozone National Ambient Air Quality Standards (NAAQS). On November 26, 2019 (84 FR 65063), the EPA proposed to approve the State's November 29, 2017, SIP revision, which consists of amendments to the New Jersey Administrative Code (N.J.A.C.) 7:27-16.3, "Gasoline Transfer Operations" (the Rule). Under these amendments, certain gasoline dispensing facilities (GDFs) must make upgrades to Stage I gasoline vapor controls and decommission Stage II gasoline vapor systems. Under the Rule, Stage I controls are required for tank breathing and refueling systems, with some exceptions for single-point vapor balance systems and rotatable adapters. The Rule allows GDFs with Stage I controls one year to install a California Air Resources Board-certified Stage I enhanced vapor recovery pressure/vacuum relief vent valve and seven years to comply with the remaining equipment requirements. The Rule requires GDFs with existing Stage II systems that are incompatible with onboard refueling vapor recovery (ORVR) systems to be decommissioned on or before December 23, 2020, with a demonstration that such removal is consistent with the Clean Air Act and the EPA Guidance.

Under Clean Air Act (CAA) section 202(a)(6), Congress provided authority to the EPA to allow states to remove (e.g., decommission) Stage II vapor recovery programs from their SIPs, through a SIP revision, after the EPA finds that ORVR systems are in widespread use throughout the motor vehicle fleet nationwide. On May 16, 2012, the EPA determined that ORVR systems are in widespread use nationwide for control of gasoline emissions during refueling of vehicles at GDFs. *See* 77 FR 28772 (May 16, 2012) (Widespread Use Rule). On August 7, 2012, EPA issued policy and technical guidance, *Guidance on Removing Stage II Gasoline Refueling Vapor Recovery from State Implementation Plans and Assessing Comparable Measures*, to provide information and tools for states to use to develop Stage II program phase-out plans and to

address the separate “comparable measures” requirement in CAA section 184(b)(2) that applies to states located in the Ozone Transport Region (OTR), such as New Jersey (EPA Guidance).¹

The Widespread Use Rule allowed, but did not require, states to discontinue Stage II vapor recovery programs. States are free to allow GDFs to continue to use existing ORVR-compatible Stage II systems and encouraged to ensure that facilities maintain the Stage II systems, including compliance with required testing, to ensure proper working order. New Jersey’s Rule implements this recommendation and requires the installation of enhanced conventional dripless nozzles and low permeation hoses as part of decommissioning or as maintenance of existing Stage II systems.

II. The EPA’s Evaluation of New Jersey’s Submittals

The EPA’s approval is based on the conclusion that the State’s November 29, 2017, SIP revision conforms with the EPA Guidance by demonstrating widespread use of the ORVR-equipped vehicles in the State’s vehicle fleet and that the Rule would reduce emissions of gasoline vapors thereby reducing emissions of volatile organic compounds (VOC). The EPA has determined the following: 1) the State has demonstrated that decommissioning Stage II systems would not lead to an increase in vehicle refueling emissions and would be consistent with non-interference requirements under CAA section 110(l); 2) any temporary emissions increase that may result from phasing out Stage II controls during the years 2017 to 2021 would be *de minimis* thus, the Rule satisfies the “comparable measures” requirement under CAA section 184(b)(2); and 3) the compliance date for the requirement to decommission Stage II Systems and remove the Stage II

¹ EPA. 2012. “Guidance on Removing Stage II Gasoline Refueling Vapor Recovery Programs from State Implementation Plans and Assessing Comparable Measures,” (“EPA Guidance”). See https://www3.epa.gov/ttn/naaqs/aqmguidance/collection/cp2/20120807_page_stage2_removal_guidance.pdf

program from the SIP is well within the *de minimis* crossover period, satisfying the anti-backsliding requirements under CAA section 193. In this case, the State's analysis showed that the widespread use crossover period is the period between mid-2017 and mid-2021; this timeframe coincides with the Rule's compliance date for decommissioning Stage II systems of "on or about December 23, 2020." For a detailed explanation and evaluation of the SIP revision, refer to the proposed rulemaking. *See* 84 FR 65063, November 26, 2019.

III. Comments Received in Response to the EPA's Proposed Action

In response to the EPA's November 26, 2019, proposed approval of the revisions to the New Jersey SIP for the ozone NAAQS, which consists of amendments to N.J.A.C. 7:27-16.3, "Gasoline Transfer Operations," the EPA received two public comments from two anonymous commenters during the 30-day public comment period. The EPA has evaluated the comments, as discussed below, and has determined that New Jersey's SIP revision addressing the ozone NAAQS is consistent with the CAA and, therefore, the EPA is approving New Jersey's SIP revision. Following is a summary of the comments and the EPA's response. The full text of the comments may also be viewed under Docket ID Number EPA-R02-OAR-2019-0399 on the <http://www.regulations.gov> website.

Comment: Although I agree with the action the EPA is taking here more should be done to explain why New Jersey only evaluated five of the 21 counties in the state. If New Jersey were to evaluate all 21 counties what changes would occur to the cross-over period? EPA should evaluate all counties not just a small sample of the state. This is especially important because the entire state of New Jersey is one giant non-attainment area and has been for decades. Knowing

when exactly the cross-over period happens in the entire state would maximize the benefits of the remaining stage II GDFs while allowing the state to remove the program responsibly.

Response: The EPA appreciates that the commenter does not object to the EPA's proposed action to approve New Jersey's SIP. By approving the current SIP revision, the EPA concludes that the State's use of a representative sample of five counties (i.e., Essex, Middlesex, Camden, Ocean, and Salem), instead of the total twenty-one counties that make up the State of New Jersey, in its widespread use analysis is consistent with the EPA Guidance which did not specify the quantity of state-wide data needed to determine widespread use. The EPA believes the State's estimate of the cross-over period (i.e., the time period over which the benefits of the Stage II controls are outweighed by its incompatibility with ORVR systems) would not meaningfully change if New Jersey included any additional counties or all of the State's 21 counties in the analysis. For the reasons outlined below, the State's selection of the five counties used in the analysis sufficiently supports the State's proposed revisions to remove Stage II control requirements from the State Implementation Plan.

As discussed in the proposed rulemaking, New Jersey's selection is partially based on the results of the State-administered statewide survey of GDF in 2014 that found the five counties to be representative and cover a wide geographic cross-section of the State. The New Jersey Department of Environmental Protection (NJDEP) analyzed vehicle refueling data "for the years 2014 and 2018, for the five counties, which represent urban and rural areas of NJ, in both of New Jersey's ozone nonattainment areas. The various vehicle mixes in these counties cover the range of ORVR-equipped vehicle fractions in the New Jersey fleet."² The State deemed the five

² Email correspondence from NJDEP dated Jan. 8, 2020, on file with EPA.

counties used in the analysis to cover vehicle use patterns for restricted and unrestricted access road types (e.g., express roadways and side roads) within the State. They also span rural, suburban, and urban ozone non-attainment areas; coastal and inland areas; and the major directional regions of the State.

The NJDEP found that “... in Appendix A, the variation in the crossover dates between the five counties is only 8-10 months, while the variation in the crossover dates between the range of percentage of vacuum assist throughput is over 3 years. Therefore, the variation due to differences between counties is small compared to the variation due to percentage of gasoline dispensed via vacuum assist versus balanced systems. Extension of the analysis to additional counties would not increase overall accuracy of the crossover date estimates because crossover date accuracy is being driven by other inputs such as the percentage of gasoline dispensed via vacuum assist versus balanced systems.” *See*, footnote 2. EPA is not aware of, and the commenter did not assert or provide, any information suggesting that the State’s selection of the counties used in the analysis omits any area types or any significant vehicle use patterns occurring in New Jersey. Consequently, the EPA finds that the State’s analysis is consistent with EPA guidance and is acceptable.

As stated above, the State’s widespread use analysis reveals that the county-specific ORVR system-equipped vehicle turnover rates (i.e., the rate at which ORVR system-equipped vehicles are deployed) have very little influence on the estimate of the cross-over period (on the order of 2-4 months in this analysis).³ On the other hand, the State’s analysis shows that other factors of Equation 1 in the EPA Guidance, which EPA suggests should be used to derive the cross-over period, have a much greater effect on the cross-over period estimate. One such factor

³ New Jersey Department of Environmental Protection, Appendix A Phase II SIP Equations 7-3-17, Crossover Summary tab.

is the difference between the gasoline throughput attributable to ORVR vehicles versus that attributable to non-ORVR vehicles. The EPA Guidance recommends that states use either of two vacuum-assist Stage II in-use control efficiency (i.e., gasoline throughput) scenarios⁴ in the widespread use analysis. For New Jersey, depending on the scenario used, the cross-over period could vary as much as 39-43 months, a level of variability that dwarfs the influence of any variability due to the county-specific ORVR turnover rate (in this case, 2-4 months). Despite the influence of in-use control efficiency on the calculation of the cross-over period, the State's ability to derive this information is limited. As long as such high uncertainty remains for this factor, and other factors that contribute more to the cross-over estimate, adding more counties to the vehicle turnover analysis would not be insightful. Indeed, EPA recognizes the difficulty in achieving accuracy of the in-use control efficiency derivation, and the EPA Guidance's suggested methodology provides the flexibility for states to account for this uncertainty.

Ultimately, under the widespread use determination, the EPA reviews SIP revisions on a case-by-case basis for compliance with the criteria set forth in the CAA sections 110(l), 193 and 184(b)(2), with due consideration of the submitting state's support for the values used in its calculations and any related emissions inventory and/or air quality analyses it presents. Here, the State has shown that its estimate of the cross over period accords with the methods outlined in the EPA Guidance and satisfies the referenced statutory requirements.

⁴ New Jersey's analysis using the two Stage II in-use control efficiency scenarios are outlined in the SIP revision Appendix A Phase II SIP Equations 7-3-17 Cross-Over Summary, which is included in the docket for this action. Although the EPA Guidance suggests a 60-75 percent Stage II in-use control efficiency when estimating the ORVR-equipped fueling at Stage II pumps, the State chose a range of 30-70 percent, which would give a more conservative estimate of the cross-over period. That is, when 29 and 71 percent of the GDFs are fueling ORVR-equipped vehicles.

Comment: To encourage entities to both participate and follow the proposed guidelines, a potential tax credit, or some form of credit for the entity may want to be considered. If such an approach were to be implemented, it would likely encourage the entities to participate in the program as well as assist in their continuing to follow the guidelines put forth by the proposed regulation.

Response: The EPA appreciates the suggestion of additional incentives aimed at achieving higher compliance rates; however, the actions proposed are outside the scope of the current rulemaking or EPA's authority, which is to ensure that the State has the authority to implement and enforce the rule proposed. Economic incentives are matters for the State to consider if it chooses to do so. New Jersey entities subject to the Rule, as approved into the SIP, are required to comply with the provisions outlined therein regardless of whether financial or other economic incentives exist. EPA believes that GDFs are sufficiently motivated to comply with the Rule, because the State has an inspection program and violations would result in penalty assessments.

The State inspection program has stringent requirements to ensure compliance under which only a licensed contractor is authorized to decommission a Stage II system. Moreover, owners and operators of GDFs must notify the State of any decommissioning activity 14 days prior to a site's initiating any such activity.⁵ Additionally, within 14-days after completion of the decommissioning, the GDF must provide the State with an email notification of the completion of such work; the completion notification is required to document the post-decommissioning testing and demonstration of compliance with the Petroleum Equipment Institute checklist. With the notification system, State inspectors would have prior knowledge of when decommissioning

⁵ The owner or operator of the GDF must provide the State with an email notification of any decommissioning activity.

projects would take place in an area and would, therefore, also have the opportunity to inspect the facility during any such decommissioning activity to ensure compliance with the Rule. Roughly half of the facilities in New Jersey have decommissioned their Stage II systems to date. The deadline for decommissioning vacuum-assist Stage II is December 23, 2020. GDF owners and operators have additional incentive to complete decommissioning by the State's deadline, because it overlaps the deadline for EMV chip requirements.⁶ The concurrent deadlines allow many GDFs to reap the economic benefit of coordinating dispenser replacements with other equipment upgrades necessary to meet with the EMV chip requirements.

IV. Summary of the EPA Final Action

The EPA is approving the State of New Jersey's SIP revision dated November 29, 2017, which includes the State's revised New Jersey Administrative Code (N.J.A.C.) 7:27-16.3, "Gasoline Transfer Operations", effective November 20, 2017. The EPA is approving this SIP revision because it meets all applicable requirements of the CAA and the EPA Guidance, and it will not interfere with any applicable requirement concerning attainment of the NAAQS and reasonable further progress or with any other applicable requirement of the CAA. As stated in the proposed rulemaking (84 FR 65063, November 26, 2019), the EPA finds that the State has demonstrated, through application of the Incremental Equation 1, that removing Stage II will meet rate of progress and reasonable further progress requirements and assist in attainment demonstration and transportation conformity impacts related to removing Stage II. The State's November 29, 2017,

⁶ The Europay, MasterCard, Visa (EMV) is a global standard for chip-based debit and credit card transactions. *See e.g.*, <https://usa.visa.com/visa-everywhere/security/emv-at-the-pump.html> (last accessed 02/20/2019). The financial services corporations Visa and Mastercard set a deadline by which automated fuel dispenser/pump merchants processing payments through debit and credit cards with the Mastercard and Visa brands would need to implement systems necessary to read debit and credit cards equipped with EMV chips.

SIP revision is approvable under CAA section 110(l) because VOC emissions increase that may have occurred between the years 2017 to 2021 are too small to interfere with attainment and rate of progress and reasonable further progress towards attainment of ozone NAAQS. The State's SIP submission also demonstrates that continuing a Stage II vapor recovery program would have resulted in an increase in refueling emissions due to excess emissions resulting from incompatibility between the ORVR and Stage II systems. Preventing an increase in refueling emissions is consistent with non-interference requirements of the CAA section 110(l).

The revision to the SIP also satisfies the “comparable measures” requirement of CAA section 184(b)(2), which requires OTR states proposing to remove Stage II control programs to implement measures that would achieve “comparable,” and not “equivalent,” reductions to existing Stage II programs. As stated in the EPA Guidance, “the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis*, incremental loss of area-wide emission control.”⁷ In this case, the State has demonstrated that any temporary emissions increase resulting from phasing out of Stage II controls during the years 2017 to 2021 would be *de minimis*.

Finally, the State has satisfied the anti-backsliding requirements of the CAA section 193. The compliance date of on or about December 23, 2020, for decommissioning Stage II systems and removal of the Stage II program from the New Jersey SIP is well within the crossover period of mid-2017 and mid-2021 timeframe.

V. Incorporation by Reference

⁷ EPA Guidance, above, p. 6.

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are incorporating by reference N.J.A.C. 7:27-16, “Control and Prohibition of Air Pollution by Volatile Organic Compounds”, regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁸

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

⁸ 62 FR 27968 (May 22, 1997).

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

May 22, 2020.

Dated:

Peter Lopez,
Regional Administrator,
Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF-New Jersey

2. In §52.1570, the table in paragraph (c) is amended by revising the entry “Title 7, Chapter 27, Subchapter 16” to read as follows:

§52.1570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW JERSEY STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
Title 7, Chapter 27, Subchapter 16	Control and Prohibition of Air Pollution by Volatile Organic Compounds	November 20, 2017	[insert date of publication in the Federal Register] , EPA approval finalized at [insert Federal Register	

			citation]	
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[FR Doc. 2020-11712 Filed: 6/17/2020 8:45 am; Publication Date: 6/18/2020]